

EXHIBIT 7

1/11/2005 Morgan, Patricia Kay - FIRST DATA BANK

00001

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
 IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

-----x

In Re: PHARMACEUTICAL)
)
 INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
)
 PRICE LITIGATION) CIVIL ACTION NO.
) 01-CV-12257-PBS
)

-----)

THIS DOCUMENT RELATES TO)
 ALL ACTIONS)

-----x

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

ROBERT J. SWANSTON, Individually and)
 on behalf of himself and all others)
 Similarly situated,)

Plaintiff,) Case No.
 v.) CV2002-004988
)

TAP PHARMACEUTICAL PRODUCTS,) Vol. 1
 INC., et al.,)
)

Defendants.)
)

VIDEOTAPED DEPOSITION OF PATRICIA KAY MORGAN
 New York, New York
 Tuesday, January 11, 2005

1 Q. When you say populate the database,
 2 what database are you referring to?
 3 A. Our national drug data file as the
 4 master.
 5 Q. What goes into the national drug data
 6 file? What information?
 7 A. The NDC number, the product name, the
 8 Rx, the OTC status, the DEA status, the pricing
 9 information, the label warnings, the allergy
 10 alerts, the indications, contraindications.
 11 There's over 200 data elements per NDC, so...
 12 Q. Okay. So it's a database that would
 13 be used by a variety of people for a variety of
 14 different purposes; is that correct?
 15 A. That's correct.
 16 Q. Like a doctor could use it to check
 17 for contraindications?
 18 A. Correct.
 19 Q. Does it also include pricing
 20 information?
 21 A. Yes, sir, it does.
 22 Q. What pricing information does it

1 foundation. If you know.
 2 A. We request the published price from
 3 the manufacturer to the wholesaler.
 4 Q. Great. You said there's a direct
 5 price field?
 6 A. Correct.
 7 Q. What does that correspond to?
 8 A. Direct price is for those companies
 9 that sell direct. In addition to selling through
 10 wholesalers, or for those that only sell direct
 11 and do not sell through wholesalers.
 12 Q. And where does the information for
 13 that field come from?
 14 A. It again is defined as the published
 15 direct price from the manufacturer to
 16 non-wholesale customers.
 17 Q. So you get it from manufacturer price
 18 lists?
 19 A. Correct.
 20 Q. Calculated WP, what does that refer
 21 to?
 22 A. It was a field that was in existence

33

35

1/11/2005 Morgan, Patricia Kay

1 include?
 2 A. We have several pricing fields. We
 3 have what's known as WHN, which is frequently
 4 referred to as WAC or wholesale acquisition cost.
 5 We have a direct price field.
 6 We have a calculated WP field.
 7 We have a Blue Book field.
 8 We have a suggested wholesale price
 9 field.
 10 We have the federal upper limit.
 11 And we have the Medicaid AWP field.
 12 And we have it for both unit and package.
 13 Q. WHN, which you said is commonly
 14 referred to as WAC, where does the information
 15 for that field come from?
 16 A. For the policy it's the published
 17 price from the manufacturer to the wholesaler, so
 18 it comes from the manufacturer.
 19 Q. And that's an undiscounted published
 20 price, to your knowledge?
 21 MR. SOBOL: Objection to form.
 22 MR. KERN: Objection, lacks

1/11/2005 Morgan, Patricia Kay

1 before I arrived. For all purposes now it
 2 matches our Blue Book field.
 3 Q. Okay. SWP, what does that refer to?
 4 A. It's the suggested wholesale price,
 5 and it's populated if the manufacturer suggests
 6 an AWP.
 7 Q. Some manufacturers include an AWP on
 8 their price lists; is that correct?
 9 A. A suggested AWP, yes.
 10 Q. And that's where you put that into
 11 what you call the SWP field?
 12 A. That's correct.
 13 Q. What is Blue Book price?
 14 A. Blue Book is what's become synonymous
 15 with AWP to many of our customers, so it is the
 16 average wholesale price, so it's the price that
 17 includes the markup after our wholesaler survey,
 18 if the product's available through the
 19 wholesaler.
 20 Q. And what's the federal upper limit
 21 price?
 22 A. That is a number we populate that's

34

36

1 supplied by CMS for multisource products.
 2 Q. You get that directly from the
 3 government?
 4 A. That's correct.
 5 Q. And the Medicare AWP?
 6 A. I'm sorry, it's Medicaid.
 7 Q. Or Medicaid, sorry.
 8 A. AWP. That again is prices that were
 9 provided to us by the Department of Justice.
 10 Q. Now, in Exhibit Morgan 003, if you take a
 11 look at the fourth full paragraph, the last sentence
 12 says, "We also consider the manufacturer's
 13 suggested wholesale price in our determination."
 14 Does that refer to your determination
 15 of Blue Book AWP?
 16 A. Yes, sir.
 17 Q. How is the manufacturer's suggested
 18 wholesale price considered in that determination?
 19 What role does it play?
 20 A. Well, there are some manufacturers,
 21 and we use the term manufacturers quite loosely,
 22 we're actually talking about any supplier of data

1 Q. So what do you do with it?
 2 A. The data is entered into the database
 3 using editor cards, and it populates the fields
 4 on the database based on the tables that have
 5 been set up.
 6 Q. What are the tables?
 7 A. When you're populating a database, a
 8 lot of the things are driven by a table that says
 9 what's going to happen with the data.
 10 Q. I see. I think you have in the past
 11 referred to AWP as, quote, a "benchmark" price.
 12 Is that a phrase with which you're familiar?
 13 A. Yes, sir.
 14 Q. What do you mean by that?
 15 A. When I say benchmark, it's something
 16 that people are used to using from which they
 17 make their determinations on how to use the data.
 18 So it's like, it's a reference that can be used
 19 for whatever use you want to use it for.
 20 Q. It is by definition in your terms an
 21 average; is that correct?
 22 A. That's correct.

37

39

1/11/2005 Morgan, Patricia Kay

1 to the database -- and there are things such as
 2 repackagers or private label items that do not go
 3 through the wholesaler, so you cannot perform a
 4 survey on those items, and so those items would
 5 be populated in the SWP field but the number
 6 would also go into the Blue Book field.
 7 Q. When you say the number would go into
 8 the Blue Book field, does it go into some sort of
 9 algorithm or computer that calculates an average
 10 based on these inputs?
 11 MR. KERN: I object to the question
 12 as vague and ambiguous. If you're referring
 13 to the aforementioned repackagers and
 14 relabelers only.
 15 Q. Actually I'm referring to all of the
 16 data that you collect. Okay, the various prices
 17 from wholesalers or repackagers that you just
 18 described. These are different data points
 19 coming from different people; is that correct?
 20 MR. SOBOL: Objection to form.
 21 A. That's correct. But we don't average
 22 any of that information, or any of that data.

1/11/2005 Morgan, Patricia Kay

1 Q. So you wouldn't expect that it's
 2 necessarily the price at which any individual is
 3 actually charging or paying for the product?
 4 A. I have no knowledge of what anybody
 5 pays for product.
 6 MR. MORGENSTERN: Would you mark this
 7 Exhibit Morgan 004, please.
 8 (Exhibit Morgan 004, for
 9 identification, Bates-numbered FDB-AWP
 10 28850-52, publication sent to customers in
 11 1991.)
 12 BY MR. MORGENSTERN:
 13 Q. I've shown you what has been marked
 14 as Exhibit Morgan 004 for identification, Ms. Morgan.
 15 Have you ever seen this before?
 16 A. Yes, sir, I have.
 17 Q. What is it?
 18 A. It is an article -- or actually it's
 19 a publication that went out to your customers in
 20 1991.
 21 Q. Was this part of a regular --
 22 regularly published series of publications by

38

40

1 Q. Two sentences later it says, quote,
2 "It is theoretically possible but highly unlikely
3 for AWP to be the price at which a manufacturer,
4 such as Aventis Behring offers a drug to a
5 wholesaler."

6 Is that, to your knowledge, a true
7 statement?

8 A. That's correct.

9 MR. MORGENSTERN: Mark this as
10 Exhibit Morgan 007.

11 (Exhibit Morgan 007, for
12 identification, document Bates-numbered
13 FDB-AWP 15102 through 15185, Price Alert,
14 March 15, 2000.)

15 Q. I would like to show you what has
16 been marked as Exhibit Morgan 007 for
17 identification. Can you tell me what that is,
18 for the record?

19 A. It appears to be a copy of the
20 March 15, 2000 Price Alert.

21 Q. This is a more complete version of
22 what a Price Alert looks like than the previous

1 when you joined the company, until whatever
2 changes you referred to before were made in 2003?

3 MR. SOBOL: Objection to form.

4 A. That's correct.

5 Q. And could you describe in general
6 terms how that was done?

7 MR. SOBOL: Objection.

8 A. I assume you're asking how we
9 determined the markup, is that the question?

10 Q. Yes.

11 A. We basically contacted the national
12 wholesalers to find out what markup they were
13 applying to a manufacturer's line, or we could to
14 a specific NDC, if necessary, and then that
15 number was entered into a table. And that's
16 pretty much it.

17 Q. So you were asking the wholesalers
18 for a markup factor that they applied to a
19 company's products?

20 A. Correct.

21 Q. And --

22 MR. SOBOL: I'm sorry. I didn't get

45

47

1/11/2005 Morgan, Patricia Kay

1 exhibit, which was just the editorial page?

2 A. It appears so, yes.

3 Q. And if you turn to page 1 of the
4 Price Alert, that's the editorial page. Is it
5 not?

6 A. Page 3? Oh, I'm sorry.

7 Q. It's got different page numbers.

8 A. I'm sorry.

9 Q. It's FDB0 15104.

10 A. All right, I'll agree with you now.

11 Q. Is that the editorial page?

12 A. That's correct.

13 Q. And did you write that editorial?

14 A. Yes, I did.

15 Q. At the time that you wrote it, was
16 that an accurate description of how First Data
17 Bank determined AWP at the time of this
18 publication?

19 A. (Reading.) Yes, it is.

20 Q. Is it the case, Ms. Morgan, that
21 First Data Bank was using essentially the same
22 method to determine AWP from the time, at least

1/11/2005 Morgan, Patricia Kay

1 a chance to object, so objection.

2 MR. MORGENSTERN: Okay.

3 Q. And then I think you said sometimes
4 you would survey them with respect to a markup
5 factor on a particular drug as opposed to a whole
6 line?

7 A. To a particular NDC number.

8 Q. An NDC number.

9 A. Right.

10 THE VIDEOGRAPHER: We're going to be
11 going off the record. The time is now
12 10:39 a.m.

13 (Discussion off the record.)

14 THE VIDEOGRAPHER: We're going to be
15 going back on the record. The time is now
16 10:52 a.m.

17 BY MR. MORGENSTERN:

18 Q. Ms. Morgan, I apologize for the
19 disruption. Let's go back to where we were
20 before.

21 You described surveying wholesalers
22 to find the markup factor. Am I correct then

46

48

1 that the -- the information that you're
2 collecting in your survey is not the precise
3 price of the specific drug, but the markup factor
4 that the wholesaler is using to mark up either
5 that particular NDC number or when you're
6 surveying for an entire company's products, to
7 that company's products?

8 MR. KERN: Objection, lacks
9 foundation.

10 MR. SOBOL: Objection to form.

11 A. We survey for a markup, and not a
12 specific price.

13 Q. Okay. And how would -- how does the
14 wholesaler give you the markup factor? What
15 would that -- do they tell you that it's in the
16 form of a percentage or a multiple of something?
17 How is it expressed?

18 A. Generally as a percentage.

19 Q. And then what do you do with the
20 percentage that you get from a particular
21 wholesaler?

22 A. Remember I said generally a

1 correct?

2 A. That's correct.

3 Q. What circumstances would prompt you
4 to seek the markup factor for a particular NDC
5 number as opposed to for the entire company's
6 products?

7 A. Generally an inquiry from a customer
8 indicating that what they were hearing back was
9 different than what we were populating.

10 Q. How often do you survey wholesalers?

11 A. As the need arises.

12 MR. SOBOL: Objection to form.

13 Q. How often were you surveying
14 wholesalers in the time period between when you
15 joined the company and 2003?

16 A. We survey as the need arises.

17 Q. And how do you define need?

18 A. Changes in the marketplace. Customer
19 request to do so.

20 Q. What kind of changes in the
21 marketplace would prompt you to survey?

22 A. Mergers, acquisitions, divestitures.

49

51

1/11/2005 Morgan, Patricia Kay

1 percentage. Sometimes they may say that they're
2 using these -- what the manufacturer suggested.

3 Q. Okay.

4 A. So depending upon the response we
5 get, that information is then put into the table
6 that is used to generate the pricing.

7 Q. Okay. And you do this with a number
8 of wholesalers; is that correct?

9 A. We do it with national full-line
10 wholesalers.

11 Q. So the information that's going into
12 the databases is coming from more than one
13 source, correct?

14 MR. KERN: Objection, vague and
15 ambiguous.

16 A. At this point in time, yes, it was.

17 Q. At this point in time, you mean
18 between the time you joined the company and 2003?

19 A. That's correct.

20 Q. Now, you had mentioned that
21 occasionally you would survey for the markup
22 applied to a particular NDC number. Is that

1/11/2005 Morgan, Patricia Kay

1 Q. I would like to show you what has
2 been marked as Exhibit Morgan 008 for
3 identification.

4 (Exhibit Morgan 008, for
5 identification, document Bates-stamped
6 FDB-AWP 2005, from Web site, Frequently
7 Asked Questions.)

8 Q. Can you tell me what that is?

9 A. It appears to be from our Web site
10 under the frequently asked questions.

11 Q. Did you have any role in writing the
12 response to the question, how does First Data
13 Bank determine the BB AWP as published in NDDF
14 Plus and PriceProbe? The top three paragraphs.

15 A. (Reading.) It was actually prepared
16 by counsel, and our customer support area, so I
17 don't recall a role in preparing it.

18 Q. Okay. Can you tell from this
19 document when this appeared on your Web site?

20 A. It's dated 11/4/2002, but I'm not
21 sure if that's the date it was printed out, or
22 our date of production.

50

52